

BOARD AND GENERAL MEETINGS OF A COMPANY IN NIGERIA: A LEGAL DISCOURSE

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Abstract: This paper seeks to discuss board and general meetings of a company in Nigeria. Hence, as one of the most important post-incorporation compliance requirements for a company in Nigeria is the direction for its directors, management and members to have specific types of meetings for the purpose of running the course of the company's progression as well as for the purpose of passing resolutions authorizing certain actions or transactions of the company. Such types of meetings are known as board and general meetings as provided under the Companies And Allied Matters Act, 2020. Furthermore, this research work will be addressing the following subtopics: What board and General meetings entails, procedures, types, quorum, notices and resolutions of board and general meetings; reasons for board and general meetings, comparative discourse of board and general meetings, as well as raising observations and recommendations.

Keywords: Board meeting, General meeting, Statutory meeting, Annual General meeting, Notice

1 INTRODUCTION

In accordance with the provision of the Company And Allied Matters Act 2020 Board meeting and General meetings, which could be statutory meeting, annual general meeting, extraordinary General meeting, as well as Court- Ordered meeting are very important and even mandatory for the smooth running of a company, as such, board meeting is to be held by directors of a company which is meant to transact on matters over which the directors have power [1]. Whereas the General meeting is the Company's highest decision-making body, at which the shareholders/members exercise their voting rights. At the General Meeting decisions are taken regarding matters such as the annual accounts, dividend, election of the Board of Directors and the auditor as well as their remuneration. It is pertinent to state that, for the effective discharge of the Board of Directors oversight and leadership roles, the Board is expected to meet regularly to deliberate and take decisions on key issues. Principle 10 of the Nigerian Code of Corporate Governance, 2018 (NCCG) provides that "Meetings are the principal vehicle for conducting the business of the Board and successfully fulfilling the strategic objectives of the Company [2].

1.1 Definition of Terms

1.1.1 Board meeting

This is the type of meeting held by the directors of a company, for the managing and directing the affairs of the company [3].

1.1.2 General meeting

General meetings refers to the meeting of shareholders/ members and other authorized persons that are entitled to attend such as auditors, debenture holders and directors.

The members of the Company in General meeting are the other organ of the Company apart from the Board of Directors. The members are an organ of the Company when they function at the general meeting of the Company [4].

2 BOARD MEETING

The Board of Directors (the "Board") of a company play a crucial role in its success or failure; more often than not, successful companies are headed by effective Boards. The Board of a company is responsible for providing entrepreneurial and strategic leadership, and also serves as a link between investors, shareholders, and the company. Although this is one aspect that is typically overlooked by startups and small businesses in structuring their operations, it plays a key role in building long-lasting businesses. The applicable legislation for the conduct of Board meetings in Nigeria is the Companies and Allied Matters Act 2020. Boards are also to be guided by the Articles of Association of the Company and the Nigerian Code of Corporate Governance 2018 as issued [5].

Hence, the role of the board is to exercise oversight and control over the Company, to ensure that management acts in the best interest of the shareholders and investors whilst sustaining the prosperity of the Company.

2.1 The Structure of Board Meeting

Code of Corporate Governance 2018 as issued recommends that the Board of a Company should be of a sufficient size to effectively undertake and fulfill its business and to constitute a quorum. The Board should comprise of a mix of the following directors and structured in the same manner: (i) Executive Director (ED) – The ED should be an employee of the Company, involved in the operations of the Company who provides support to the Managing Director; (ii) Non-Executive Director (NED) – The NED should contribute his/her expertise and independent judgment on issues of strategy on the Board and should not be an employee of the Company; (iii) Independent Non-Executive Director (INED) – The INED should bring a high degree of objectivity to the Board for sustaining stakeholder trust and confidence and should not be an employee of the Company; and (iv) Managing Director (MD) – The MD should be an employee of the Company involved in its daily operations, with a good knowledge of the Company's business[6].

2.2 Proceedings of Board Meeting

By virtue of Section 289 of the Companies And Allied Matters Act, 2020 the directors of a company may meet together for the dispatch of business, adjourn and regulate their business as they think fit. The first board meeting must be held not later than six (6) months after the incorporation of the company. Questions at the meeting shall be decided by maturity of votes. The chairman has a casting vote in case of equality of votes [7].

A director may at any time summon a meeting of the directors; and the secretary on the requisition of a director, shall at any time, summon a meeting of the directors. The directors elect a chairman of their meetings, and determine the period for which he is to hold office. If no chairman is elected, or if at any time the chairman is not present within five (5) minutes after the appointed time for the holding of the meeting, the directors present may choose one of them as chairman.

Directors may delegate any of their powers to a managing director or to committees consisting of such member(s) of their body as they think fit; and such managing director or committees so delegated must conform to the regulations of the directors. A committee has the power to elect its own chairman and a substitute where he is absent. The chairman also has a casting vote.

2.3 The Quorum for Board Meeting

The quorum required for the transaction of the business of directors are a minimum of two directors where there are not more than six directors. But where there are more than six directors, the quorum is one-third of the number of directors, and where the number of directors is not a multiple of three, then the quorum is one third to the nearest number [8].

In a situation Where the board is unable to act because a quorum can not be formed, the general meeting may act in place of the board and where a committee is unable to act because a quorum can not be formed, the board may act in place of the committee where the committee can not form a quorum.

2.4 Notice of Board Meeting

A director/the company secretary (acting on the instructions of a director) may at any time summon a meeting. A statutory notice of at least 14 days, is to be provided by the company secretary of the meeting to all the Board members with the board pack (containing all necessary documents for the meeting). Such notice can, however, be waived upon a unanimous agreement of all the directors to waive this right .

It is pertinent to state that none compliance with the requirement to give notice will invalidate the meeting. Also, notice to any director who is outside Nigeria for the time being is not necessary; though, the notice may be sent to an address in Nigeria if he has given one [9].

3 GENERAL MEETINGS OF COMPANIES

Company General Meetings is so essential and important and forms part and parcel of corporate Governance. Hence, General meeting refers to the meeting of shareholders/ members, and other authorized persons that are entitled to attend, such as auditors, debenture holders and directors. It is principally driven by members and shareholders of the company. Although the directors are in charge of day to day management of a company, yet there are certain decisions that can not be resolved at the board level. Thus, such issues can then be referred to the members at the general meetings to decide.

The members in general meeting can take certain decisions to control the management of the company, and can also utilize the general meeting to ratify the acts of the directors which were ultra vires. Although non business organization, such as incorporated Trustees are not statutorily compelled to hold Annual General meeting, the constitution of such organization usually provide for general meetings in form of annual general meeting and Extra-Ordinary general meeting, in order to take advantage of general of general meetings for effective corporate governance [10].

There are four types of companies General Meetings viz. (a) Statutory Meeting (b) The Annual General Meeting (c) The Extra Ordinary General Meeting (d) Court- Ordered Meeting.

3.1 Statutory Meeting

This type of meeting is prescribed for public companies only. It is to be held within 6 months from the date of incorporation of the company. The meeting is principally to consider the Statutory Report which must be sent to the members at least 21 days before the date of the meeting by the directors to every member, and also for the discussion of any matter relating to the formation of the company and commencement of business, as well as considering matters arising from statutory report. The contents of the statutory report are:

- (a) The total number of shares allotted, distinguishing shares allotted as fully or partly paid up otherwise than in cash and stating in the case of shares partly paid up, the extent to which they are so paid up, and either case the consideration for which they have been allotted.
- (b) The total amount of cash received by the company in respect of all the shares allotted, distinguished as aforesaid.
- (c) The names, addresses and descriptions of the directors, auditors, managers (if any), and secretary of the company.
- (d) The particulars of any pre-incorporation contract together with the particulars of any modification or proposed modification thereon.
- (e) Any underwriting contract that has not been carried out and the reasons therefor.
- (f) The arrears (if any) due to calls from every director.
- (g) The particulars of any commission or brokerage paid or to be paid in connection with the issue or sale of shares or debentures to any director or to the manager,
- (h) An abstract of the receipts of the company and of the payments made from them up to a date within seven days (7) of the date of the report, which shall, as far as it relates to the shares allotted by the company, and to the cash received in respect of such shares and to the receipts and payments on capital account, be certified as correct by the auditors of the company.

3.1.1 Resolution on statutory report

If a member wishes to propose a resolution on any matter arising out of the statutory report, from the date of his receipt of the statutory report, he must give a further 21 days notice to the company, of his intention to propose such a resolution in the general meeting.

3.1.2 The effect of non-compliance with statutory meeting

There are two main effect of non-compliance with statutory meeting or failure to hold statutory meeting and deliver statutory report as and when due. The two main consequences are as follows:

- (a) By failure to hold a statutory meeting is an offence, the company and all officers are liable to a fine [11].
- (b) Failure to hold a statutory meeting or to submit statutory report to the Corporate Affairs Commission is a ground for winding up by the court.

3.2 Annual General Meeting

Every company (private or Public) is to hold an Annual General Meeting. The notice calling it must describe it as an Annual General Meeting. Not more than 15 months should elapse between the date of one annual general meeting and the next. However, the first annual general meeting of a company may be held within 18 months of its incorporation i.e. the company need not hold its first annual general meeting in the 1st or 2 year of its incorporation. For example if a company was incorporated on 1st November 2020, it need not hold annual general meeting in 2020 or 2021 but must hold it at least in April 2022. For subsequent annual general meetings, Corporate Affairs Commission may extend the time for holding the meeting by not more than 3 months. The notice for the Annual general meeting must be sent to members at least twenty-one (21) days before the meeting, but shorter notice is allowed if agreed to by all the members entitled to attend and vote.

3.2.1 Failure to hold annual general meeting

Failure to hold an annual general meeting or to comply with the directives of CAC towards holding an AGM is an offence, and the companies and defaulting officers are liable to fine. The CAC may equally on application of any member, call or direct the calling of a general meeting, and give directives as it thinks fit that one member of the company present, in person or by proxy shall be deemed to constitute a quorum which may take decisions binding on all the members, and may be deemed to be an Annual General Meeting.

3.2.2 Procedures to compel holding an Annual General Meeting where a member applies to corporate affairs commission

The following procedures would be adopted to compel the holding of Annual General Meeting:

- (a) A member can apply to the CAC urging the CAC to call or direct the calling of a meeting. The CAC can grant an extension not exceeding three(3) months from the time the meeting ought to hold.
- (b) If a member application is timely and the CAC grants the Order to hold the meeting in that year, the meeting is clearly an AGM of that same year. However, if application and Order are made in the next year or following year then the meeting is not to be treated as the company's AGM of the previous year, unless at the meeting the company resolves that it shall be so treated.
- (c) If the company resolves that it should be treated as its AGM of previous year (likely that there would be another outstanding AGM of the current year), a copy of the resolution shall within 15 days after its passage, (treating the meeting held in current year as the AGM of a previous year), must be filed with Corporate Affairs Commission.
- (d) CAC can give also give a direction that one member of the company present in person or by proxy in the said meeting, may apply to the federal High Court for an Order to take decision which shall be binding on all members.

3.2.3 Business transaction at Annual General Meetings

The business transacted at an annual general meeting includes ordinary business and special business [12]. The ordinary business of the meeting includes declaration of dividend, presentation of the financial statement, Directors' and Auditors' report, election of directors to replace those retiring, appointment and remuneration of Auditors and appointment of members of the Audit Committee. Any other business is deemed special business.

4 Extra-Ordinary General Meeting

This type of meeting can be held at any time. It is meant to deal with any matter that is so important that it cannot wait until the next Annual General Meeting. The Board of Directors may or any Director, if there are no other Directors in Nigeria to form a quorum, whenever they or he deems fit convene an Extra-Ordinary General Meeting [13].

Extra-Ordinary General Meeting may also be requisitioned by members holding not less than one tenth of the paid up capital or not less than one tenth of the total voting rights of members where the company has no share capital. If after 21 days of the deposit of the notice of requisition the Directors fail to call a meeting, the requisitionists may themselves call the meeting. All business transacted at Extra-Ordinary General Meeting are deemed special business. Consequently, none of the items designated as ordinary business of Annual General Meeting can be transacted at EGM. Also, a matter which constitutes ordinary business can not be discussed at EGM, but only at AGM. For example, removal of director is not an ordinary business but appointment of a director is an ordinary business. Therefore, a Director can be removed at EGM but substantive director can not be appointed at EGM. To fill the gap, the removed director can be replaced as casual vacancy pending the next AGM for regularization of the appointment.

4.1 Persons that can Convene an Extra-Ordinary General Meeting

Any of the following persons can convene an extra-ordinary General meeting of a company.

- (a) Board of Director
- (b) Any Director if other directors are not within Nigeria and quorum may be affected.
- (c) Requisition by members holding not less than one-tenth of the paid up voting share capital (or in the case of a company without share capital , members holding one-tenth of the voting rights), upon compliance with the rules of procedure for members requisitioned EGM.

4.2 The Procedures for Members Requisitioning Extra-Ordinary General Meeting

The following procedural steps should be complied with for a validly convened EGM by requisition of members:

- (a) Members requisitioning must possess the voting share capital or voting rights: not less than one-tenth of the paid up voting share capital (or in the case of a company without a share capital, members holding one-tenth of the voting rights). Otherwise, the Directors may reject the Resolution and it cannot be debated or put to the vote at the meeting.
- (b) The Requisitionist must deposit a signed requisition at the registered office of the company stating "the objects of the meeting". The resolution which they intend to propose.
- (c) If the directors fail within 21 days of the deposit of the requisition to convene a meeting, the requisitionists, or any one or more of them, representing more than $\frac{1}{2}$ of the total voting rights of all of them, may themselves convene a meeting for a date within 3 months from the deposit of the requisition to transact the business described in their requisition.
- (d) Any reasonable expenses of the requisitionists in convening the meeting are then payable by the company and recoverable from the directors.
- (e) If no quorum is present at the requisitioned meeting within one hour from the time appointed for the meeting it is dissolved, i.e that is end of the matter, there is no adjournment.

4.3 Venue of Meetings

All Statutory and Annual General Meetings shall be held in Nigeria, with the exceptions of small companies [14]. A private company may hold its general meetings electronically provided that such meetings are conducted in accordance with the articles of the company.

4.4 Notice of Meeting

All General Meeting requires 21 days of notice calculated from date it is sent out or posted to the date of the meeting [15]. However, shorter notice could be given: (a) for Annual General Meeting if it is agreed to by all the members entitled to attend and vote at the meeting., (b) For any other meeting by a majority holding not less than 95% in nominal value of the shares with right to attend and vote. The Importance of the Notice is to adequately inform the member of the kind of meeting he is called to attend, the venue, the business or items to be discussed so as to prepare either to participate in the discussion or even to understand what is going to be discussed.

4.5 Content of Notice

To achieve aim and purpose, notice must be clear in its contents. It must not be misleading or ambiguous. Thus some important information must be contained in it. The contents of notice as provided for in section 242(1) of the Companies and Allied Matters Act, 2020 are: place, date, time general nature of business to be transacted in detail to enable members decide whether the issue to be discussed are of interest to them and whether to attend the meeting. If there is going to be a special resolution, the terms of the resolution should be included in the notice (normally the resolution is quoted). In Annual General Meeting, it will suffice to state in the notice that the purpose of the meeting is to transact the ordinary business of an annual general meeting.

4.6 Persons Entitled to Notice

The only persons entitled to receive notice of a general meeting are as follows:

- (a) Every member
- (b) Every person upon whom the ownership of a share capital devolves by reason of his being a legal representative, receiver or a trustee in bankruptcy of a member
- (c) Every director of the company
- (d) Every auditor for the time being of the company
- (e) The secretary

4.7 Service of Notice

A notice may be given by the company to any member either personally or by sending it by post to him or to his registered address, or (if he has no registered address within Nigeria) to the address, if any, within Nigeria supplied by him to the company for the given of notice to him.

4.8 Failure to Give Notice of Meeting

Failure to give notice of any meeting to a person entitled to receive it invalidates the meeting as well as the businesses transacted and the resolutions passed at such meeting unless such failure is an accidental omission on the part of the person giving the notice. For instance, HON. JUSTICE ONYEKACHI AJA, JCA held in *Oteri Holdings Ltd v. Mofta West Africa Ltd & Ors.* (2021) LPELR-54853 (CA) that: “Failure to give notice of a meeting to a person entitled to receive it shall invalidate the meeting, unless such failure is an accidental omission on the part of the person(s) giving the notice”.

5 COURT ORDERED MEETING

Where it is impracticable for any reasons to call or conduct a meeting of the company, the Federal High Court may on its own motion, or on application of directors of persons entitled to a vote at such meeting, order a meeting to be called [16]. See also the case of *Okeowo v. Migliore* (1979) 11SC 138;(1978 A11 NLR. The Federal High Court can order a meeting of company in the following circumstances:

- (a) If meeting of the company is impracticable to hold
- (b) Demise of all directors and shareholders
- (c) Restructuring scheme such as merger, compromise, arrangement or reconstruction between two or more companies.
- (d) Where a company makes a compromise with its members or creditors but not involving sale of assets of the company.

5.1 Resolutions

There are two types of resolutions as provided under the Companies and Allied Matters Act, 2020 viz: (1) Ordinary resolution, which is passed by a simple majority of votes, cast by members in person or by proxy. Ordinary resolution is presumed when the Act simply requires the passing of a resolution by the Company, without saying which (ordinary or special). (2) Special resolution is passed by at least $\frac{3}{4}$ (three- fourth majority) of members voting in person or by proxy at a general meeting of which not less than 21 days notice of intention to propose the resolution has been given . Shorter notice may however be given if agreed to by majority holding not less than 95% of the nominal value of the shares or by members representing not less than 95% of the total voting rights in case of company not having share capital.

5.2 Minutes of Meeting

This is a record of all the proceedings made at any meeting. The minutes of meeting is a record of all salient issues, matters, discussions, and deliberations made in a meeting. It includes the agenda of the meeting, the decisions made, tasks or actions to be taken, and it should be signed by the chairman and secretary of the company.

The Minutes book is proof that a meeting was duly convened. Hence, every company is required to keep a record of proceedings and decisions taken at all board meetings, board committee meetings, or general meetings in the Minutes of the meeting.

6 THE COMPARATIVE LINES BETWEEN BOARD MEETING, GENERAL MEETING AND EXTRA-ORDINARY GENERAL MEETINGS

Looking at the nature of how Board and General meetings are held, or ought to be held, and the purpose in which a company should hold each of those meetings by law, there's the need to point out the major comparative differences between the two. These comparative differences are:

(a) Boarding meeting basically, is meant for all the directors of the Company, whereas, General meeting has to do with all the shareholders or members of the company as distinct to board meeting.

(b) The first Board meeting must be held not later than six (6) months after the incorporation of the Company. Whereas, for the Company General meeting; its statutory meeting must be held within six (6) months, and within eighteen (18) months for the first Annual General meeting.

(c) The Quorum that is necessary for the transaction of business in board meetings is 2 members where they are not more than six (6). And where they are more than six the quorum shall be one-third. Whereas in general meeting, the quorum is also formed by one-third of the total members of the Company, and where the number of members is six or less, the quorum is two members.

(d) In Board meetings, a board of director can not attend the meeting by proxy. Whereas, in general meetings, a member can attend the meeting physically or by proxy and shall be deemed to constitute a quorum in a meeting where quorum is needed.

(e) The statutory notice for all types of General meeting is 21 days from the date in which the notice was sent out. Whereas, for board meeting, the statutory requirement is a fourteen (14) day notice in writing to all the directors entitled to receive the notice.

(f) Failure to give out the required notice of meeting in either board or general meetings can invalidate the meeting.

(g) The Extra-ordinary General meeting (EGM) is any meeting other than the Annual General meeting in which business relating to Company's management are transacted. This category of meeting is not run regularly, instead, it is for urgent and unforeseen matters.

(h) An extraordinary meeting can be held on any day including national holiday, and at anytime during the day. Such meetings can be convene by shareholders and directors of the company.

6.1 OBSERVATIONS

This paper observed at the course of running this research that the Companies and Allied Matters Act, 2020 recognizes two major types of meetings of a company, namely, the board of directors meeting and the general meeting which involves the shareholders. The Board of directors have supremacy over the general meetings in matters of day-to-day management of the company, however, there is no any provision under CAMA that has expressly states the academic qualification for these board of directors of the company in order to enhance performance and productivity of the Company. Secondly, it has also been observed that voting in all board and general meetings must be carried out in person. Hence, the below recommendations.

6.2 Recommendations

Having observed the lacuna in terms of qualification of board of directors and the right to vote during meetings through other means than proxy system or physical attendance, I suggest thus:

Firstly, to enhance performance and productivity of the board of directors to Companies, there should be a provision under CAMA specifying the quality of persons to be appointed as directors in terms of academic qualifications, knowledge and technical skills. Hence, the Companies and Allied Matters Act, 2020 be amended to reflect this view.

Secondly, it is recommended in this research that the Companies And Allied Matters Act should be amended to dispense with the proxy system and or physical attendance and voting at the meeting. And instead make provision for right to vote by post, email or text messages. As this system is workable in other climes such as the United State of America.

7 CONCLUSION

The Board and General meetings of the Company each have its purpose. It is therefore important for the company to observe the holding of these meetings. There are commensurate consequences for not holding the meetings. A good company management will ensure that the meetings are held when due to ensure smooth administration of the company. This is to avoid the unpleasant situation where a minority may go to court to secure an order to hold a one-man meeting.

CONFLICT OF INTEREST

The authors have no relevant financial or non-financial interests to disclose.

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